

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NSIGHT, INC.,

Plaintiff,

v.

PEOPLESOFT, INC.,

Defendant

No. C 04-3836 MMC (MEJ)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR LEAVE TO FILE FOURTH
AMENDED COMPLAINT; VACATING
HEARING**

Before the Court is plaintiff nSight's motion for leave to file a Fourth Amended Complaint ("4AC"). Defendant Oracle USA, Inc. has filed opposition, to which plaintiff has replied. Thereafter, because plaintiff had not, with one exception, stated the purpose of the proposed amendments, the Court ordered further briefing, (see Order, filed May 23, 2006), which the parties subsequently filed. Having reviewed the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the papers, VACATES the hearing scheduled for June 30, 2006, and rules as follows.

On February 28, 2006, plaintiff filed a motion for leave to file a 4AC. At the case management conference conducted March 10, 2006, the Court advised plaintiff the motion would not be heard until plaintiff filed a notice of motion with a hearing date and submitted a proposed 4AC. (See Minutes, filed March 10, 2006.) Thereafter, on March 20, 2006,

1 plaintiff noticed a hearing date and submitted its proposed 4AC.

2 Initially, in seeking leave to file a 4AC, and before submitting a proposed 4AC,
3 plaintiff sought leave to make one amendment, specifically, to “stat[e] clearly,” (see Pl.’s
4 Mot., filed February 28, 2006, at 3:2), the false statements allegedly made by defendant’s
5 predecessor to non-party IMI Bevcare (“IMI”). As set forth in the Third Amended Complaint
6 (“TAC”), those statements, allegedly made to IMI by Ed Connolly (“Connolly”), defendant’s
7 sales representative, were that plaintiff “could not come up with financing for the project”
8 and plaintiff “was incapable of having a 30% deposit of funds before it started work on the
9 project,” which statements, as alleged in the TAC, were false because plaintiff “had the
10 ability to deposit the money.” (See TAC ¶ 20f.) In the proposed 4AC, plaintiff alleges the
11 false statement made by Connolly to IMI was that plaintiff “would be unable to perform
12 without the 30% earnest deposit” plaintiff had requested from IMI, which statement plaintiff
13 alleges was false because plaintiff was able to start the project and pay its consultants
14 whether or not IMI made the requested deposit. (See Proposed 4AC ¶ 20f.)

15 Defendant argues it would be prejudiced if plaintiff amends ¶ 20f because defendant,
16 in deposing Shawn Stufft (“Stufft”), IMI’s lead negotiator on the subject contract, did not ask
17 Stufft whether Connolly made the particular statement alleged in the proposed 4AC, thus
18 implying defendant would be required to re-depose Stufft if the proposed amendment were
19 allowed.¹ The transcript of Stufft’s deposition, however, indicates Stufft was asked about
20 and answered a number of questions as to what statements, if any, were made by Connolly
21 with respect to plaintiff’s proposed contract terms, and that Stufft testified Connolly never
22 stated plaintiff was in any kind of financial difficulty or, for that matter, stated anything
23 negative about plaintiff. (See Hughes Supp. Decl., filed June 16, 2006, Ex. E at 72-73, 89-
24 90.) In short, defendant had an opportunity to, and did in fact, address during discovery the
25 substance of the proposed amendment to ¶ 20f. Under the circumstances, defendant has
26 not shown it would be prejudiced by the proposed amendment to ¶ 20f. Accordingly,

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28 ¹Defendant further notes fact discovery closed as of December 30, 2005.

1 plaintiff will be afforded leave to amend ¶ 20f, as set forth in the proposed 4AC.

2 As noted, with respect to the proposed amendments other than the proposed
3 amendment to ¶ 20f, the Court ordered plaintiff to file a supplemental brief setting forth the
4 purpose of each such proposed amendment. In its supplemental brief, plaintiff states the
5 purpose of certain of such proposed amendments is to correct grammatical or
6 typographical errors, or to more precisely describe certain discrete factual allegations.
7 Defendant has not offered specific opposition to these types of amendments, in particular,
8 the proposed amendments to ¶¶ 7, 20, 20c, 20g, 21, and 29. Accordingly, plaintiff will be
9 afforded leave to amend those paragraphs, as set forth in the proposed 4AC.

10 With respect to the remaining proposed amendments, specifically, the proposed
11 amendments to ¶¶ 20h, 22, 29a, 29b, 29c, 29d, 29e, 29f, 29g, 29h, the first 29i, the second
12 29i,² 29j, and 29l, defendant argues such amendments allege new claims and/or depend on
13 theories and evidence not disclosed in the course of discovery. Plaintiff, on the other hand,
14 asserts its purpose is to “elaborate” on existing claims, (see, e.g., Pl.’s Explanation, filed
15 May 28, 2006, at 2:15-16), and that its existing claims would “not change a bit” if such
16 proposed amendments were allowed, (see id. at 11:24-25). Plaintiff concedes, however,
17 “Rule 8 does not require a recitation of facts.” (See Pl.’s Reply, filed June 16, 2006, at
18 3:18-19.) Consequently, assuming plaintiff is correct that the remaining proposed
19 amendments would “not change” its existing claims, plaintiff has failed to demonstrate any
20 need for such amendments. Accordingly, leave to so amend will not be afforded.³

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26 ²The proposed 4AC includes two paragraphs denominated “29.i.”

27 ³If, at a later time, either party seeks to introduce evidence not timely disclosed and
28 to which objection is made, the admissibility of such evidence will be evaluated under the
applicable federal rules. See, e.g., Fed. R. Civ. P. 37(c)(1).


CONCLUSION

For the reasons stated above, plaintiff's motion for leave to file a Fourth Amended Complaint is hereby GRANTED in part and DENIED in part. Specifically, plaintiff is hereby GRANTED leave to file its proposed Fourth Amended Complaint, but shall delete from such pleading the proposed amendments to ¶¶ 20h, 22, 29a, 29b, 29c, 29d, 29e, 29f, 29g, 29h, the first 29i, the second 29i, 29j, and 29l, as to which paragraphs leave to amend is hereby DENIED.

Plaintiff's Fourth Amended Complaint, if any, shall be filed no later than July 7, 2006.

IT IS SO ORDERED.

Dated: June 28, 2006


MAXINE M. CHESNEY
United States District Judge